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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	**CC Docket No. 96-128**
	)	
Oklahoma Independent Telephone Companies Petition for Declaratory Ruling	)	

To: Chief, Competitive Pricing Division, Common Carrier Bureau

PETITION FOR DECLARATORY RULING

The Oklahoma Independent Telephone Companies ("Oklahoma Independents" or "Independents"),[1] by counsel, and pursuant to Section 1.2 of the Rules of the Federal Communications Commission ("Commission" or "FCC"),[2] hereby request that the FCC resolve an outstanding legal controversy with respect to the Commission's directives regarding the pricing of intrastate payphone access lines ("PALs").[3] Specifically, the Independents seek resolution regarding whether a state can refuse to allow a local exchange carrier ("LEC") to file

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[1] The Oklahoma Independents are: Chickasaw Telephone Company, Eaglenet, Inc., Kanokla Telephone Association, Inc., Oklahoma Telephone & Telegraph, Inc., Pine Telephone Company, Santa Rosa Telephone Cooperative, Inc., and Valliant Telephone Company. Each of these companies is an incumbent local exchange carrier ("LEC"), see 47 U.S.C. § 251(h), providing exchange and exchange access services in particular areas of the State of Oklahoma.

[2] 47 C.F.R. § 1.2.

[3] See generally *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 20541 (1996) ("Report and Order"); Order on Reconsideration, 11 FCC Rcd 21233 (1996) ("Reconsideration Order") (collectively "Payphone Orders").

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cost-based rates.[4] The public interest will be served by the issuance of the requested declaratory ruling by ensuring that the Independents are given the opportunity to establish PAL rates that recover fully their costs associated with the PAL as provided for under applicable Commission decisions. The issuance of the requested ruling also will alleviate unnecessary uncertainty regarding the ability of the Independents to collect payphone compensation.[5] As indicated herein, the Independents submit that a Final Order issued April 16, 1999 by the Corporation Commission of the State of Oklahoma ("OCC")[6] contravenes the Commission's Payphone Orders by disallowing the Independents' efforts to file cost-based rates for their respective PAL rates in a manner consistent with federal payphone pricing directives.

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[4] The Independents confine the instant Petition to the pricing of LEC payphone services provided to payphone service providers ("PSPs"). As indicated in by the Commission, the pricing regime under Sections 251 and 252 of the Act, 47 U.S.C. §§ 251-252, is not applicable to Section 276 payphone services offered by incumbent LECs. See Report and Order, 11 FCC Rcd at 20615, ¶ 147 (stating that Section 276 of the Act does not refer to or require the application of Sections 251 and 252 to LEC payphone services). See also *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 15499, 15936, ¶ 876 (stating that the services that incumbent LECs offer to PSPs are retail services provided to end users, and should be available at wholesale rates to telecommunications carriers, but need not be made available at wholesale rates to independent PSPs that are not telecommunications carriers).

[5] As part of the statutory framework, the FCC has pursued compensation mechanisms for all payphone service providers, which have been affirmed in part and vacated in part. See Illinois Public Telecomm. Ass'n v. FCC, 117 F.3rd 555 (D.C. Cir. 1997); and MCI Telecomm. Corp. et al. v. FCC, 143 F.3d 606 (D.C. Cir. 1998). To be eligible to receive such compensation, incumbent LECs were required, among other items, to have an "effective intrastate tariff reflecting the removal of charges that recover the costs of payphones and any intrastate subsidies." Reconsideration Order, 11 FCC Rcd at 21293, ¶ 131. For the reasons discussed herein, the Independents are concerned that their compliance with this requirement may also be called into question.

[6] Final Order of the Corporation Commission of the State of Oklahoma ("OCC Final Order").

Accordingly, the Oklahoma Independents request the FCC to declare that the basis upon which the OCC precluded the Oklahoma Independents from filing cost-based rates for PALs is contrary to the FCC's prior pricing guidelines, and to direct the OCC to undertake further proceedings consistent with the Commission's directives.[7]

I. Background

In 1997, the Oklahoma Independents each filed payphone tariffs containing, rates, terms and conditions of service for payphone lines applicable to all PSPs. The Independents requested the OCC to approve both an interim PAL rate equal to their respective business access line rate and their rates for central office coin features associated with the provisioning of payphone services.[8] The interim rates were approved by the OCC on April 15, 1997.

The Independents subsequently requested approval of revised rates for PALs in a manner consistent with FCC payphone pricing directives. These PAL rates were filed with supporting cost information to establish that the rate was fully compensatory. On October 29,

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[7] Consistent with the dual roles afforded states and the Commission regarding the regulation of telecommunications, the Independents do not believe that preemptive pricing of the PAL is required by the Commission. As indicated, infra, the information which the Independents submit was required for the proper pricing of their respective PALs, was filed with, but excluded by, the OCC based on a misapplication of the governing law. Upon grant of this Petition, the Independents fully expect that the OCC will conduct proper proceedings to implement any and all Commission actions arising from this proceeding. Accordingly, the Independents see no need for, and therefore do not seek, FCC-prescription of their PAL rates. However, if the Independents' expectation with respect to further OCC action is not realized, the Oklahoma Independents reserve all of their rights to such further FCC action to the extent necessary.

[8] The Independents have summarized the relevant portions of what transpired before the OCC. In addition, however, attached hereto and incorporated herein by reference is the OCC Final Order (including the Report of the OCC's Administrative Law Judge ("ALJ"), which sets forth the procedural and factual background of this proceeding.

1998, the Independents filed a brief in support of their position pertaining to cost-based PAL rates. The OCC's ALJ issued his oral ruling on the brief, incorrectly concluding that the FCC never intended for the Independents to provide cost support for PAL rates or prove that their PAL rates are cost-based as defined by the FCC. Acting on this misunderstanding, the ALJ did not allow the introduction of testimony at hearing on behalf of the Independents' in support of their position that their proposed PAL rates were cost-based in accordance with the FCC's payphone pricing directives.

At the close of the hearing, the ALJ recommended denial of the Independents' request to file cost-based rates for their PALs and recommended that the Independents' existing business line rates be used for the Independents' PAL rates. In affirming the ALJ's Report, the OCC found that

> payphone access line rates are not required to be cost-based and unsubsidized; rather the state is responsible to ensure that the basic payphone line is tariffed in accordance with the requirements of the Telecommunications Act of 1996. Therefore, the Commission finds that the ALJ's findings and recommendations are consistent with the record and reflect a reasonable interpretation and application of the FCC's Payphone Orders, and for that reason, should be affirmed.[9]

II. The OCC's Ruling is Contrary to the Clear Directives of the Commission's Payphone Orders Regarding Pricing of Payphone Service

By its Final Order, the OCC precluded the Independents from filing PAL rates that are cost-based in accordance with the FCC's payphone pricing directives. The OCC's decision was based on a clear misunderstanding of FCC directives. To rectify this error, the Independents request that the FCC reaffirm and declare that the OCC must allow the

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[9] OCC Final Order at 2 (emphasis supplied).

Independents to file cost-based rates, and require the OCC to conduct further proceedings in order to allow the Independents to proceed with their rate filing and cost demonstration.

To implement Section 276 of the Act, the Commission was required to take all actions necessary to discontinue all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues.[10] In its Report and Order, the Commission adopted rules and policies governing LEC provision of certain payphone features and functions in accordance with this statutory directive.[11] The Commission also clearly stated that: "We will rely on the states to ensure that the basic payphone line is tariffed by the LECs in accordance with the requirements of Section 276."[12] Specifically, the Commission required that incumbent LECs provide tariffed, nondiscriminatory basic payphone services that enable independent payphone providers to offer payphone services using either instrument-implemented "smart" payphones or "dumb" payphones that utilize central office coin services, or some combination of the two, in a manner similar to the LECs.[13] In its Reconsideration Order, the Commission reiterated its requirement that LECs file tariffs for basic payphone services and unbundled functionalities in

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[10] 47 U.S.C. § 276(b)(1)(B). Although this statutory provision applied to certain LECs, the FCC nonetheless applied its Payphone Orders to all LECs, including the Independents. See e.g., Report and Order, 11 FCC Rcd at 20614, ¶ 146.

[11] Report and Order, 11 FCC Rcd at 20614-20616, ¶¶ 146-148.

[12] Reconsideration Order, 11 FCC Rcd at 21308, ¶ 163 (emphasis supplied).

[13] Report and Order, 11 FCC Rcd at 20614, ¶ 146.

the intrastate and interstate jurisdictions, and articulated its pricing directive as follows:

> The tariffs for these LEC payphone services must be: (1) cost based; (2) consistent with the requirements of Section 276 with regard, for example, to the removal of subsidies from exchange and exchange access services; and (3) nondiscriminatory. States must apply these requirements and the Computer III guidelines for tariffing such intrastate services. (emphasis supplied).[14]

These directives were subsequently affirmed in two further FCC actions. First, in an Order granting limited waiver of the Commission's interstate tariffing requirements for unbundled features and functions, the Commission again made clear that rates for payphone access lines must be cost-based.[15] Addressing the applicability of federal guidelines for state tariffing of payphone services, the Commission stated

> The plain language of the Order on Reconsideration provides that state tariffs for payphone services must be cost based, consistent with the requirements of Section 276, nondiscriminatory, and consistent with Computer III guidelines.[16]

Second, in addressing when intrastate tariffs for payphone services comply with federal pricing

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[14] Reconsideration Order, 11 FCC Rcd at 21308, ¶ 163.

[15] All of the Independents are classified as rate-of-return carriers under FCC rules and, as such, are utilizing the alternative cost support methodologies for rate-of-return carriers pursuant to 47 C.F.R. §§ 61.38, 61.39, or 61.50(i), specifically § 61.39. See Report and Order, 11 FCC Rcd at 20614, ¶ 146.

[16] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order, 12 FCC Rcd 20997, 21012, ¶ 31 (emphasis supplied).

guidelines,[17] the Commission stated

> The requirements for intrastate tariffs are: (1) that payphone service intrastate tariffs be cost-based, consistent with Section 276, nondiscriminatory and consistent with Computer III tariffing guidelines; and (2) that the states ensure that payphone costs be unregulated equipment and subsidies be removed from the intrastate local exchange service and exchange access service rates.[18]

Despite the clarity of the Commission's directives in this matter, the OCC erroneously denied the Oklahoma Independents' request to file cost-based rates and cost studies demonstrating that their proposed PAL rates were developed in compliance with the applicable FCC pricing directives. Therefore, a Declaratory Ruling is necessary to resolve this controversy and remove uncertainty with respect to the right of the Independents to establish a cost-based rate for their PALs.[19] Absent grant of the relief requested, the Independents will be precluded from demonstrating that their proposed PAL rates are fully compensatory and are consistent with federal directives, thereby frustrating the policy objectives of Congress and the Commission with respect to the pricing of payphone services, and potentially raising issues with respect to ongoing payment of payphone compensation.

III. Conclusion

The OCC has issued an Order that precludes the filing of cost-based rates contrary to the standards established by the Commission's Payphone Orders. Accordingly, the Oklahoma

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[17] See, n. 15 supra (discussion of interstate regulatory framework under which the Independents operate).

[18] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order, 12 FCC Rcd 21370, 21374, ¶ 10.

[19] See also 47 U.S.C. § 276(c).

Independents seek a Declaratory Ruling that they have the right to establish cost-based PAL rates in order to ensure that payphone line services provided by the Oklahoma Independents are tariffed in accordance with the Commission's directives.

Respectfully submitted,

Chickasaw Telephone Company
Eaglenet, Inc.
Kanokla Telephone Association, Inc.
Oklahoma Telephone & Telegraph, Inc.
Pine Telephone Company
Santa Rosa Telephone Cooperative, Inc.
Valliant Telephone Company

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Their Attorneys

September 22, 1999

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF EAGLENET, INC. FOR APPROVAL OF TARIFFS	) CAUSE NO. PUD 970000024
IN THE MATTER OF THE APPLICATION OF VALLIANT TELEPHONE COMPANY FOR APPROVAL OF TARIFFS	) CAUSE NO. PUD 970000025
IN THE MATTER OF THE APPLICATION OF KANOKLA TELEPHONE ASSOCIATION, INC. FOR APPROVAL OF TARIFFS	) CAUSE NO. PUD 970000027
IN THE MATTER OF THE APPLICATION OF SANTA ROSA TELEPHONE COOPERATIVE, INC. FOR APPROVAL OF TARIFFS	) CAUSE NO. PUD 970000082
IN THE MATTER OF THE APPLICATION OF OKLAHOMA TELEPHONE & TELEGRAPH, INC. FOR APPROVAL OF TARIFFS	) CAUSE NO. PUD 970000141
IN THE MATTER OF THE APPLICATION OF CHICKASAW TELEPHONE COMPANY FOR APPROVAL OF TARIFFS	) CAUSE NO. PUD 970000187
IN THE MATTER OF THE APPLICATION OF PINE TELEPHONE COMPANY FOR APPROVAL OF TARIFFS	) CAUSE NO. PUD 970000188
	) ORDER NO. **431564**

HEARING: November 24, 1998
Before Robert E. Goldfield, Administrative Law Judge

December 1 and 4, 1998
The Commission *en banc*

APPEARANCES: Mary Kathryn Kunc and Ron Comingdeer, Attorneys
Chickasaw Telephone Company
EagleNet, Inc.
Valliant Telephone Company
KanOkla Telephone Association, Inc.
Oklahoma Telephone & Telegraph, Inc.
Pine Telephone Company
Santa Rosa Telephone Cooperative, Inc.
J. David Jacobson, Attorney
Oklahoma Payphone Association
Elizabeth Ryan, Assistant General Counsel, and Cece L. Coleman, Senior Assistant General Counsel
Public Utility Division

FINAL ORDER

BY THE COMMISSION:

The Oklahoma Corporation Commission being regularly in session and the undersigned Commissioners being present and participating, this Cause comes on for consideration and action upon appeals filed by EagleNet, Inc. Chickasaw Telephone Company, KanOkla Telephone

Association, Inc., Oklahoma Telephone and Telegraph, Inc., Pine Telephone Company, Santa Rosa Telephone Cooperative, Inc., and Valliant Telephone Company ("the Applicants"), to the Report Of The Administrative Law Judge ("Report") which was issued in this Cause on November 24, 1998. These appeals are deemed timely, and proper notice was given.

FINDINGS

The Commission, having heard the statements of Counsel, and having previously reviewed the record, the appeals, and the findings and recommendations of the Administrative Law Judge ("ALJ") contained in his Report which is attached hereto as Attachment "A" and incorporated herein by reference, finds that the distinction drawn by the ALJ between central office coin services tariffs and access line tariffs is consistent with the FCC's Payphone Orders and is appropriate in these Causes. Further, the Commission finds that the ALJ's recommendation that central office coin services rates should be cost based, unsubsidized and applied on a non-discriminatory basis to all providers is appropriate. In addition, the Commission concurs with the ALJ that payphone access line rates are not required to be cost based and unsubsidized; rather, the state is responsible to ensure that the basic payphone line is tariffed in accordance with the requirements of the Telecommunications Act of 1996. Therefore, the Commission finds that the ALJ's findings and recommendations are consistent with the record and reflect a reasonable interpretation and application of the FCC's Payphone Orders, and for that reason, should be affirmed.

ORDER

IT IS THEREFORE ORDERED that the findings and recommendations of the ALJ, as set forth in Attachment "A" are hereby affirmed, adopted by the Commission, and incorporated herein by reference.

IT IS FURTHER ORDERED that the existing business line single party access line rate shall be utilized by each of the Applicants to these causes as the rate for payphone access lines.

CORPORATION COMMISSION OF OKLAHOMA,

Ed Apple

ED APPLE, Chairman

Bob Anthony

BOB ANTHONY, Vice Chairman

Denise A. Bode

DENISE A. BODE, Commissioner

DONE AND PERFORMED this 16 day of April, 1999

BY ORDER OF THE COMMISSION:

Charlotte W Flanagan
CHARLOTTE W. FLANAGAN, Secretary

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF EAGLENET, INC. FOR APPROVAL OF TARIFFS	) CAUSE NO. PUD 970000024
IN THE MATTER OF THE APPLICATION OF VALLIANT TELEPHONE COMPANY FOR APPROVAL OF TARIFFS	) CAUSE NO. PUD 970000025
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IN THE MATTER OF THE APPLICATION OF PINE TELEPHONE COMPANY FOR APPROVAL OF TARIFFS	) CAUSE NO. PUD 970000188

FILED
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CORPORATION COMMISSION
OF OKLAHOMA

HEARING: November 16, 1998 before Robert E. Goldfield
Administrative Law Judge

APPEARANCES: Mary Kathryn Kunc and Ron Comingdeer, Attorneys
Chickasaw Telephone Company
EagleNet, Inc.
KanOkla Telephone Association, Inc.
Oklahoma Telephone & Telegraph, Inc.
Pine Telephone Company
Santa Rosa Telephone Cooperative, Inc.
Valliant Telephone Company
J. David Jacobson, Attorney
Oklahoma Payphone Association
Maribeth D. Snapp, Deputy General Counsel, Elizabeth Ryan, Assistant General Counsel, and Cece L. Coleman, Senior Assistant General Counsel
Public Utility Division

REPORT OF THE ADMINISTRATIVE LAW JUDGE

The captioned causes came on for consolidated hearing before the undersigned Administrative Law Judge on the above shown date pursuant to assignment and after due and proper notice, as required by law and pertinent orders of the Commission.

I. Procedural Background

Pursuant to Section 276 of the Telecommunications Act of 1996, and the Federal Communications Commission's *Report and Orders in CC Docket No. 96-128*[1], the Applicants filed

[1] *Implementation of the Pay Telephone Reclassification and Compensation Provision of the Telecommunications Act of 1996*, CC Docket No. 96-128; *Report and Order FCC 96-388*, released September

Customer Owned Payphone Tariffs containing rates, terms and conditions of service for payphone lines applicable to competitive payphone providers and the payphones owned by the Applicants. EagleNet, Inc., KanOkla Telephone Association, Inc., and Valliant Telephone Company filed Applications on January 15, 1997, Santa Rosa Telephone Cooperative, Inc. filed an Application on February 14, 1997, Oklahoma Telephone and Telegraph, Inc. filed an Application on March 14, 1997, and Chickasaw Telephone Company and Pine Telephone Company filed Applications on April 11, 1997. The Applicants requested approval of a payphone access line rate equal to their business access line rate and rates for central office coin features associated with the provisioning of payphone services. The Oklahoma Payphone Association filed Interventions and Objections in the causes and Order No. 410798 was issued on April 1, 1997 granting intervention and denying objections. The causes came for hearing before the Administrative Law Judge on April 14, 1997. Interim Orders were issued on April 15, 1997 granting approval of the Applicants Customer Owned Payphone Tariffs as filed. Intervention of AT&T of Southwest Incorporated was granted by Commission Order No. 412120 on May 8, 1997.

After weeks of intensive negotiations between the parties, in an effort to reach a compromised solution with the Intervenors, the Oklahoma Payphone Association ("OPA"), the Applicants subsequently filed amended applications which revised their tariffs to bundle their filed rates to include rates for 'dumb' and 'smart' payphone lines. On April 2, 1998, Order No. 421966 was issued setting a Procedural Schedule for the consolidated causes. The parties to this consolidated proceeding engaged in extensive discovery, consisting of cost support documentation and information regarding the Applicants payphone operations, pursuant to the Procedural Schedule in these consolidated dockets. Testimony was filed supporting their respective positions. After testimony was submitted, the parties agreed there was disagreement as to the proper costing methodology to be utilized for the Applicants Competitive Payphone Provider Tariffs because the Applicants are subject to rate-of-return regulation rather than Price-Cap regulation. Subsequently, Order No. 423153 was issued suspending and amending the Procedural Schedule to allow for the parties to brief the proper costing methodology to be utilized in the proceeding. On June 18, 1998, the parties filed briefs addressing this issue. On July 15, 1998, Commission Order No. 424666 was issued stating the proper cost support documentation required for the Applicants Customer Owned Payphone Tariffs should be information such as the Applicants' most recent NECA Universal Service Fund Analysis and/or most recent fully distributed costing methodology to comply with the FCC's Payphone Orders. Order No. 424666 was then issued by the Commission to amend the Procedural Schedule to accommodate the filing of additional testimony.

Pursuant to the costing methodology contained in Order No. 424666, and the Procedural Schedule issued in the Cause, the Applicants filed testimony on July 27, 1998, which introduced revised rates for payphone access lines which were unsubsidised and cost based, and supported the rates previously filed for adjunct services. Protective Order No. 425698 was issued on July 31, 1998 for any costing information provided to Commission Staff and the parties supporting the Applicant's proposed rates. On September 28, 1998 the Commission Staff filed testimony and the Procedural Schedule was suspended and new hearing dates were established. In an effort to settle the cases, the Applicants filed a Motion for Pretrial and/or Settlement Conference, and a Motion for Expedited Approval of Tariffs on October 2, 1998. At the hearing on the Motions on October 8, 1998, it became apparent that the parties could not agree on the intent of the FCC's Payphone Orders as it pertained to the proper costing methodology to establish the rate to be filed by the Applicants for the payphone access line. In an effort to resolve this dispute, Order No. 427213 was issued setting forth a revised Procedural Schedule in order for the parties to file briefs addressing the proper costing methodology for establishing the rates to be filed for the Applicants' payphone access line that was consistent with the Act and the FCC's Payphone Orders.

On October 29, 1998, the Applicants, Commission Staff and the Oklahoma Payphone Association filed briefs in support of their positions pertaining to the payphone access line. The Applicant's position was that the payphone access line rates set forth in their testimony were consistent with the requirements of FCC's Payphone Orders that rates should be unsubsidized and cost based, and the costing methodology set forth in Commission Order 424666. The Commission Staff's position was that the FCC did not intend for the payphone access line to be cost based and

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20, 1996; *Order on Reconsideration*, FCC 96-439, released November 8, 1996 ("Reconsideration Order"); *First Common Carrier Bureau Order* (collectively referred to as the "FCC Payphone Orders") unsubsidised, only the central office coin features associated with payphone access lines. The result of developing cost based, unsubsidized rates for the Applicants would be a higher rate than their business access line rate. The OPA stated that the payphone access line rates developed by the Applicant's were higher than their business access line rate, and rather than being unsubsidised and cost based, should be in accordance with the LECs overall revenue picture, including all subsidies and revenue sources. The ALJ issued his oral ruling on the briefs on October 30, 1998, wherein the ALJ ruled that the FCC never intended for the LECs to provide cost support for payphone access lines or prove their access lines are cost based. Rather, the FCC's Payphone Orders require the unbundled central office coin services to be supported with cost data. The payphone access lines must be priced in accordance with the LECs overall cost revenue picture.

The Prefiled Testimony of the Staff and Responsive Testimony of the OPA was filed on November 6, 1998 stating their objections to the Applicant's payphone access line rates contained in their testimony. The Applicant's filed a Response to the ALJ's oral ruling taking exception to the ALJ's findings. A Prehearing Conference was held on November 6, 1998 to set forth the issues and the witnesses to be presented at the Hearing on the Merits scheduled for November 16, 1998.

II. Summary of Evidence

Counsel for the Applicants stated that the Commission Staff and the Applicants had reached a Stipulated Agreement with regard to the $3.00 Call Screening Rate filed by the Applicants. Counsel for the OPA did not agree with the stipulation. Applicants also stated that the Commission Staff and Pine Telephone Company had reached a stipulated agreement that Pine Telephone Company will agree to tariff its payphone access line equal to their business access line rate, contingent on the agreement that this rate is not based upon cost. At this time the Court questioned both the Applicant's counsel and counsel for the Commission Staff concerning the agreed Stipulation. The Administrative Law Judge rejected the stipulated agreement, whereupon counsel for the Applicant's withdrew the stipulation between Pine Telephone Company and the Commission Staff.

Michael T. Skrivan, a principal of the consulting firm Harris, Skrivan & Associates, was called to testify on behalf of the Applicants. Mr. Skrivan is qualified as an expert witness regarding telecommunications issues, particularly in the area of payphones. He stated he has studied the FCC's Payphone Orders and in his opinion, the Applicants proposed payphone tariffs and rates are consistent with the FCC's Orders and Commission's rules.

Mr. Skrivan testified that the Companies payphone equipment has been deregulated. Affidavits signed by representatives of the Companies were admitted into evidence, confirming his testimony. He further testified that subsidies associated with payphone equipment have been removed, and the central office coin features required by the FCC Orders have been tariffed by the National Exchange Carriers Association (NECA). The Applicants are concurring carriers in the NECA Interstate Tariff. Mr. Skrivan stated that the tariffs are non-discriminatory and the Applicants' proposed tariff would apply equally to payphone service providers and the Applicants' pay phone services.

Counsel for the Applicants informed the Court of the stipulated agreement between the Applicants and the Commission Staff to recommend the $3.00 recurring charge for Call Screening. Counsel for the OPA indicated the OPA could not accept this agreement. Counsel for the Applicants then pursued examining Mr. Skrivan regarding the costing methodology for Call Screening. Mr. Skrivan testified that the cost support provided for this feature was consistent with the FCC's Orders and Commission Order No. 424666, and supported the proposed rates.

Counsel for the Applicants then began direct examination of Mr. Skrivan regarding the payphone access line rate. Counsel for the Commission Staff objected on the grounds that based upon the Court's prior oral ruling, the payphone access line was not an issue in these cases, and testimony addressing the access line should not be allowed. The objection was sustained. Counsel for the Applicants then made an offer of proof. Counsel stated that if allowed to pursue questioning of the witness on this issue, the witness would state that the unsubsidized, cost based payphone access line rates presented in his testimony were consistent with the FCC's Payphone Orders. Counsel further stated that the witness would take exception to the Administrative Law

Judges's oral ruling that the FCC could not have intended the payphone access line to be unsubsidized and cost based. The witness would testify that the payphone access line rates were developed utilizing the costing methodology contained in Title 47, Section 61.39 of the Code of Federal Regulations and Commission Order No. 424666, which allows for utilizing the Applicants most recent Universal Service Fund data filed by NECA or the Applicants most recent distributed cost study. Switching costs were based on each of the Applicants most recently fully distributed cost study adjusted to reflect the unseparated cost of providing the local switching function. Counsel also stated that Mr. Skrivan would sponsor USF costing support for the rates and introduce a letter from the FCC to the Wisconsin PUC that addresses this issue. He would further state that in his opinion, the FCC clearly indicates the payphone access line must be cost based and unsubsidized.

Counsel for the Applicants continued the offer of proof by stating that the witness would rebut the testimony of Commission Staff witness Barbara Mallett and the OPA's witness Jack Kendrick by stating that their testimony addressing the payphone access line is inconsistent with the FCC's Payphone Orders. He would testify that the payphone access line rates were non-discriminatory and consistent with the Commission's prior rulings and that the rates competitors pay should be cost based and not subsidized by other customers.

Counsel then requested the Court to strike the testimony of Commission Staff Witness Ms. Mallett and OPA's Witness Mr. Kendrick due to the fact that Mr. Skrivan was prohibited from rebutting the testimony. The Administrative Law Judge denied this request on the grounds that it was the basis of his oral ruling. Applicants' Counsel requested her objection be noted for the record.

Mr. Skrivan then testified that the costing methodology and proposed rates were consistent with the Commission's rules pertaining to new tariff filings. Counsel for the Commission objected and Counsel for the Applicants requested to make an offer of proof. The Court offer of proof was withdrawn by Counsel for the Applicants after it was determined Mr. Skrivan's prefiled testimony, which was introduced into the record, stated the proposed rates were consistent with the Commission's rules.

Upon cross-examination by Counsel for the OPA, Mr. Skrivan testified that ultimately the cost information for the central office coin feature of Call Screening was provided by the Applicants. Some figures and percentages were obtained from a NECA Universal Service Funding filing. At this point, testimony of Mr. Skrivan was *in camera* due to the confidential nature of the testimony. Mr. Skrivan testified to the basis for his cost support analysis. He stated that it is virtually impossible to acquire any type of record, engineering document or attain information from the switch manufacturer to obtain the percent allocated to Call Screening. The amount allocated to this feature was obtained from the telephone company managers. Mr. Skrivan stated that the results of his cost analysis was consistent with the numbers he has seen over a 20 year history. Mr. Skrivan further testified that he did not agree that the expense for this service was incurred without the possibility of their being used for private pay phones at the time they were incurred, and explained that investment associated with Call Screening is also incurred through the purchase of software upgrades. Upon re-direct examination, Mr. Skrivan testified that the companies incur an on-going cost to provide vertical features such as Call Screening and the proposed rates were similar to those approved for other telephone companies.

Mr. Jack Kendrick was not present to testify on behalf of the OPA. Upon objection of counsel for the Applicants, his prefiled testimony and rebuttal testimony was offered as testimony for the record.

Ms. Barbara Mallett testified on behalf of the Public Utility Division of the Oklahoma Corporation Commission. Ms. Mallett testified that since the filing of her supplemental testimony, cost studies for the vertical features were submitted by the Applicants. These cost studies were sufficient for Staff to recommend the proposed rates the Applicants filed for Call Screening. Ms. Mallett testified for the Court that the $3.00 rate for Call Screening was cost based and was stipulated between the Applicants and the Commission Staff.

Upon objection by Counsel for the Applicant's, testimony regarding the payphone access line was not given.

Upon Cross Examination, Ms. Mallett stated that Call Screening is a new service for the Applicants, and has not been previously approved by the Commission. She further testified that the difference in rates between these Applicants' rates and other Applicants' rates previously approved in other dockets is based upon the differences in each Company's costs and accounting. In her opinion, the $3.00 rates were reasonable. Ms. Mallett further testified that in her opinion, the tariffs filed by Applicants should be consistent with both the FCC's Payphone Orders and the Commission's rules.

III. Findings and Recommendations

After consideration of the testimony and exhibits presented, the Administrative Law Judge makes the following findings and recommendations.

The Administrative Law Judge finds that the central office coin service as filed by the Applicants meet the standards established by the FCC in their Payphone Orders. Those standards are that the rates should be cost based, unsubsidized and will be applied on a non-discriminatory basis to all providers. The Commission Staff recommended approval of these rates. The Administrative Law Judge recommends approval of the stipulation between the Applicants and the Commission Staff.

The Administrative Law Judge recommends denying the request of the Applicants pertaining to the payphone access line rates because the FCC's Payphone Orders do not apply to the establishment of the Payphone Access Line rates to the same extent that they apply to the central office services. That is, the payphone access line rate is not required to be cost based. Therefore, the ALJ recommends that the companies' existing business, single party rate for the access line be applicable to the payphone access line.

IT IS THEREFORE THE RECOMMENDATION OF THE ADMINISTRATIVE LAW JUDGE that the above-entitled findings of fact and conclusions of law be the order of the Commission.

Dated this 24th day of November, 1998

Robert E. Goldfield

ROBERT E. GOLDFIELD,
Administrative Law Judge

CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Petition For Declaratory Ruling" of the Oklahoma Independent Telephone Companies was served on this 22nd day of September, 1999, by hand delivery to the following parties:

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